IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 465/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : September 26, 2006

Heard Mr. Saboo, learned counsel for the appellant.

By this appeal, the appellant takes exception to the judgment and decree dated 20.7.2005 passed by Second Adhoc District Judge, Achalpur in Regular Civil Appeal No. 31/1997 dismissing the appeal filed by the appellant-plaintiff against judgment and decree dated 5.2.1997 by Third Civil Judge, (Jr. Dn.) Achalpur in Regular Civil Suit No.318/1991 dismissing the suit filed by the plaintiff for declaration, mandatory and permanent injunction.

The appellant filed the above suit seeking declaration and injunction in respect of right of way on the boundaries of properties

of defendant nos. 1 and 2. The right was claimed by way of easement of necessity as well as by way of easement by prescription. Both the Courts below have negatived the case set up by the plaintiff and consequently, dismissed the suit as well as appeal filed by the appellant-plaintiff.

Mr. Saboo, learned counsel appearing for the appellant submitted that he is not pressing the relief of declaration insofar as right of way based on necessity is concerned but he is only restricting his case insofar as right of way by way of prescription is concerned. He submitted that the finding given by the trial Court that the user of suit way was permissive and the finding given by the lower appellate Court that the user of the suit way was not as of right are perverse and contrary to the evidence on record.

I have considered the submissions made by learned counsel for the appellant and having perused the records and also impugned judgments, I am satisfied that the findings given by both the Courts below rejecting the

claim of the plaintiff insofar as right of way by way of prescription is concerned cannot be said to be perverse warranting interference in second appeal. It is well settled that the interference in second appeal against concurrent findings recorded by both the Courts below is very limited and unless the finding is perverse, no interference is permissible under section 100 of the Code of Civil Procedure. I do not find any perversity in the findings given by both the Courts below. I find that no substantial question of law arises in the matter. Hence, the appeal is summarily rejected.

JUDGE

A.